



General Assembly

**Substitute Bill No. 3**

January Session, 2011

\* \_\_\_\_\_SB00003PH\_JUD032811\_\_\_\_\_\*

**AN ACT CONCERNING A CRIMINAL HISTORY AND PATIENT ABUSE  
BACKGROUND SEARCH PROGRAM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-524 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2011*):

3 If, upon review, investigation or inspection pursuant to section 19a-  
4 498, the Commissioner of Public Health determines that a nursing  
5 home facility has violated any provision of section 17b-406, 19a-521 to  
6 19a-529, inclusive, as amended by this act, 19a-531 to 19a-551,  
7 inclusive, or 19a-553 to 19a-555, inclusive, section 19a-491a, 19a-491b,  
8 19a-493a or 19a-528a, section 3 of this act or any regulation in the  
9 Public Health Code or regulation relating to licensure or the Fire Safety  
10 Code relating to the operation or maintenance of a nursing home  
11 facility, which violation has been classified in accordance with section  
12 19a-527, [he] the commissioner shall immediately issue or cause to be  
13 issued a citation to the licensee of such nursing home facility.  
14 Governmental immunity shall not be a defense to any citation issued  
15 or civil penalty imposed pursuant to sections 19a-524 to 19a-528,  
16 inclusive, as amended by this act. Each such citation shall be in  
17 writing, shall provide notice of the nature and scope of the alleged  
18 violation or violations and shall be sent by certified mail to the licensee  
19 at the address of the nursing home facility in issue. A copy of such

20 citation shall also be sent to the licensed administrator at the address of  
21 the facility.

22 Sec. 2. Section 19a-527 of the general statutes is repealed and the  
23 following is substituted in lieu thereof (*Effective July 1, 2011*):

24 Citations issued pursuant to section 19a-524, as amended by this act,  
25 shall be classified according to the nature of the violation and shall  
26 state such classification and the amount of the civil penalty to be  
27 imposed on the face thereof. The Commissioner of Public Health shall,  
28 by regulation in accordance with chapter 54, classify violations as  
29 follows:

30 (a) Class A violations are conditions [which] that the Commissioner  
31 of Public Health determines present an immediate danger of death or  
32 serious harm to any patient in the nursing home facility. For each class  
33 A violation, a civil penalty of not more than five thousand dollars may  
34 be imposed;

35 (b) Class B violations are conditions [which] that the Commissioner  
36 of Public Health determines present a probability of death or serious  
37 harm in the reasonably foreseeable future to any patient in the nursing  
38 home facility, but [which he does not find] do not constitute a class A  
39 violation. For each [such] class B violation, a civil penalty of not more  
40 than three thousand dollars may be imposed;

41 (c) Class C violations are conditions that the Commissioner of Public  
42 Health determines constitute failure to comply with the provisions of  
43 section 3 of this act, but do not constitute a class A or class B violation.  
44 For each class C violation, a civil penalty of not more than one  
45 thousand dollars may be imposed.

46 Sec. 3. (NEW) (*Effective July 1, 2011*) (a) As used in this section:

47 (1) "Criminal history and patient abuse background search" or  
48 "background search" means (A) a review of the registry of nurse's  
49 aides maintained by the Department of Public Health pursuant to

50 section 20-102bb of the general statutes, (B) checks of state and national  
51 criminal history records conducted in accordance with section 29-17a  
52 of the general statutes, and (C) a review of any other registry specified  
53 by the Department of Public Health which the department deems  
54 necessary for the administration of a background search program.

55 (2) "Direct access" means physical access to a patient or resident that  
56 affords an individual with the opportunity to commit abuse or neglect  
57 or to misappropriate the property of a patient or resident.

58 (3) "Direct services" means services provided to a patient or resident  
59 by an individual that provides such individual with the opportunity to  
60 commit abuse or neglect or to misappropriate the property of a patient  
61 or resident.

62 (4) "Disqualifying offense" means a conviction of any crime  
63 described in 42 USC 1320a-7(a)(1), (2) or (3) or a substantiated finding  
64 of neglect, abuse or misappropriation of property by a state or federal  
65 agency pursuant to an investigation conducted in accordance with  
66 42 USC 1395i-3(g)(1)(C) or 42 USC 1396r(g)(1)(C).

67 (5) "Long-term care facility" means a nursing home, as defined in  
68 section 19a-521 of the general statutes, a home health agency, as  
69 defined in section 19a-490 of the general statutes, a homemaker-  
70 companion agency, as defined in section 20-670 of the general statutes,  
71 an assisted living services agency, as defined in section 19a-490 of the  
72 general statutes, an intermediate care facility for the mentally retarded,  
73 as defined in 42 USC 1396d(d), a chronic disease hospital, as defined in  
74 section 19a-550 of the general statutes, or an agency providing hospice  
75 care which is licensed to provide such care by the Department of  
76 Public Health or certified to provide such care pursuant to 42 USC  
77 1395x.

78 (b) The Department of Public Health shall create and maintain a  
79 criminal history and patient abuse background search program in  
80 order to facilitate the performance, processing and analysis of the

81 criminal history and patient abuse background search of individuals  
82 who have direct access or provide direct services to patients or  
83 residents through a long-term care facility.

84 (c) (1) Except as provided in subdivision (2) of this subsection, each  
85 long-term care facility, prior to extending an offer of employment to or  
86 entering into a contract for the provision of long-term care services  
87 with any individual who will have direct access or provide direct  
88 services to a patient or resident of the long-term care facility, shall  
89 require that such individual submit to a background search. The  
90 Department of Public Health shall prescribe the manner by which  
91 (A) long-term care facilities perform the review of (i) the registry of  
92 nurse's aides maintained by the department pursuant to section 20-  
93 102bb of the general statutes, and (ii) any other registry specified by  
94 the department, including requiring long-term care facilities to report  
95 the results of such review to the department, and (B) individuals  
96 submit to a state and national criminal history records checks,  
97 including requiring the Department of Public Safety to report the  
98 results of such checks to the Department of Public Health.

99 (2) No long-term care facility shall be required to comply with the  
100 provisions of this section if the individual (A) provides evidence to the  
101 long-term care facility that such individual submitted to a background  
102 search conducted pursuant to subdivision (1) of this subsection not  
103 more than three years immediately preceding the date such individual  
104 applies for employment or seeks to enter into a contract with the long-  
105 term care facility and that the prior background search confirmed that  
106 the individual did not have a disqualifying offense, or (B) will be a  
107 volunteer with the long-term care facility, provided such individual  
108 will not have direct access or provide direct services to a patient or  
109 resident of the long-term care facility.

110 (d) (1) The Department of Public Health shall review all reports  
111 provided to the department pursuant to subsection (c) of this section. If  
112 any such report contains evidence indicating that an individual has a  
113 disqualifying offense, the department shall mail written notice by

114 certified mail, return receipt requested, to the individual informing the  
115 individual of the disqualifying offense and the opportunity to file a  
116 request for a waiver pursuant to subdivisions (2) and (3) of this  
117 subsection.

118 (2) An individual may file a written request for a waiver with the  
119 department not later than thirty days after the date the department  
120 mails notice to the individual pursuant to subdivision (1) of this  
121 subsection. The department shall mail a written determination  
122 indicating whether the department shall grant a waiver pursuant to  
123 subdivision (3) of this subsection not later than fifteen business days  
124 after the department receives the written request from the individual.  
125 The fifteen-business-day timeframe for the department to act on a  
126 request for a waiver shall not apply to any instance in which an  
127 individual challenges the accuracy of the information obtained from  
128 the background search.

129 (3) The department may grant a waiver from the provisions of  
130 subsection (e) of this section to an individual who identifies mitigating  
131 circumstances surrounding the disqualifying offense, including  
132 (A) inaccuracy in the information obtained from the background  
133 search, (B) lack of a relationship between the disqualifying offense and  
134 the position for which the individual has applied, (C) evidence that the  
135 individual has pursued or achieved rehabilitation with regard to the  
136 disqualifying offense, or (D) that substantial time has elapsed since  
137 committing the disqualifying offense. The department and its  
138 employees shall be immune from liability, civil or criminal, that might  
139 otherwise be incurred or imposed, for good faith conduct in granting  
140 waivers pursuant to this subdivision.

141 (4) After completing a review pursuant to subdivision (1) of this  
142 subsection, the department shall notify in writing the long-term care  
143 facility to which the individual has applied for employment or with  
144 which the individual has applied to contract (A) of any disqualifying  
145 offense and any information the individual provided to the  
146 department regarding mitigating circumstances surrounding such

147 offense, and (B) whether the department granted a waiver pursuant to  
148 subdivision (3) of this subsection.

149 (e) Notwithstanding the provisions of section 46a-80 of the general  
150 statutes, no long-term care facility shall employ an individual required  
151 to submit to a background search or contract with any such individual  
152 to provide long-term care services if the long-term care facility receives  
153 notice from the department that the individual has a disqualifying  
154 offense in the individual's background search and the department has  
155 not granted a waiver pursuant to subdivision (3) of subsection (d) of  
156 this section. A long-term care facility may, but is not obligated to,  
157 employ or enter into a contract with an individual who was granted a  
158 waiver pursuant to said subdivision (3).

159 (f) (1) Except as provided in subdivision (2) of this subsection, a  
160 long-term care facility shall not employ or enter into a contract with  
161 any individual required to submit to a background search until the  
162 long-term care facility receives notice from the Department of Public  
163 Health pursuant to subdivision (4) of subsection (d) of this section.

164 (2) A long-term care facility may employ or enter into a contract  
165 with an individual required to submit to a background search before  
166 the long-term care facility receives notice from the department that  
167 such individual does not have a disqualifying offense on a conditional  
168 basis, provided: (A) Employment on a conditional basis shall last not  
169 more than sixty days, (B) the long-term care facility has begun the  
170 review required under subsection (c) of this section and the individual  
171 has applied for checks pursuant to said subsection (c), (C) the  
172 individual is subject to direct, on-site supervision during the course of  
173 such conditional employment, and (D) the individual affirms in a  
174 signed statement that (i) the individual has not committed a  
175 disqualifying offense, and (ii) a disqualifying offense reported in the  
176 background search required by said subsection (c) shall constitute  
177 good cause for termination and a long-term care facility may terminate  
178 the individual if a disqualifying offense is reported in said background  
179 search.

180 (g) Notwithstanding the provisions of subsection (c) of this section,  
181 the department may phase in implementation of the criminal history  
182 and patient abuse background search program by category of long-  
183 term care facility. For each category of long-term care facility  
184 implementation of the criminal history and patient abuse background  
185 search shall be on the date notice is published by the Commissioner of  
186 Public Health in the Connecticut Law Journal indicating that the  
187 commissioner is implementing the criminal history and patient abuse  
188 background search program for such category.

189 (h) The department shall adopt regulations, in accordance with the  
190 provisions of chapter 54 of the general statutes, to implement the  
191 provisions of this section.

192 Sec. 4. Section 20-678 of the general statutes is repealed and the  
193 following is substituted in lieu thereof (*Effective July 1, 2011*):

194 (a) Each homemaker-companion agency shall require that any  
195 employee of such agency hired on or after October 1, 2006, submit to a  
196 comprehensive background check. In addition, each homemaker-  
197 companion agency shall require that any employee of such agency  
198 hired on or after October 1, 2006, complete and sign a form which  
199 contains questions as to whether the current or prospective employee  
200 was convicted of a crime involving violence or dishonesty in a state  
201 court or federal court in any state; or was subject to any decision  
202 imposing disciplinary action by a licensing agency in any state, the  
203 District of Columbia, a United States possession or territory or a  
204 foreign jurisdiction. Any employee of a homemaker-companion  
205 agency hired on or after October 1, 2006, who makes a false written  
206 statement regarding such prior criminal convictions or disciplinary  
207 action shall be guilty of a class A misdemeanor.

208 (b) The provisions of this section shall cease to be effective on the  
209 date the Commissioner of Public Health publishes notice in the  
210 Connecticut Law Journal of the department's implementation of the  
211 criminal history and patient abuse background search for homemaker-

212 companion agencies in accordance with the provisions of section 3 of  
213 this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	19a-524
Sec. 2	<i>July 1, 2011</i>	19a-527
Sec. 3	<i>July 1, 2011</i>	New section
Sec. 4	<i>July 1, 2011</i>	20-678

**AGE**      *Joint Favorable Subst. C/R*      PH

**PH**      *Joint Favorable Subst. C/R*      JUD